



REPUBLIC OF KENYA



KENYA LAW
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**Kiplagat v Republic (Criminal Revision E185 of 2025)
[2025] KEHC 11073 (KLR) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11073 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E185 OF 2025
RN NYAKUNDI, J
JULY 24, 2025**

BETWEEN

HOSEA KIPLAGAT APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Representation:

M/s Sidi for the state

1. The applicant was charged of malicious damage to property. The brief facts are on the 9th day of March 2025 at around 1500hrs at Kose village in Moiben sub county within Uasin Gishu county willfully and unlawfully damaged the following four (4) water jerricans, five (5) plates, one (1) basin and pieces of clothes all valued Ksh. 3,000/= the property of Jennifer Chemweno. He pleaded guilty to the offence convicted and sentenced to 2 years' imprisonment.

Decision

1. This application is based on the provisions of the *criminal procedure code* namely Section 357, 362, 364 as read with 382. The *constitution* also provides under Art 50 (2) (p) (q) as follows:
 - (p) to the benefit of the least severe of the prescribed punishments for an offence, if the prescribed punishments for the offence has been changed between the time that the offence was committed and the time of sentencing; and
 - (q) if convicted, to appeal to, or apply for review by, a higher court as prescribed by law.
 - (3) if this Article requires information to be given to a person, the information shall be given in language that the person understands.



2. The same *constitution* in Art 50 (6) (a) (b) expressly states as follows:

A person who is convicted of a criminal offence may petition the High Court for a new trial if-

- a. The person's appeal, if any, has been dismissed by the highest court to which the person is entitled to appeal, or the person did not appeal within the time allowed for appeal; and
- b. new and compelling evidence has become available.

3. This application is based on the social inquiry report dated 22nd July 2025 carried out by the probation officer which contextualized the issues as follows:

Sources of information prison records, inmate families, community and the complainant

Current Family And Personal History

Family Background

The inmate before this Honorable Court is the fifth-born in a family of eight children of Michael Mulera and Jennifer Chepmweno. His father is a peasant farmer residing in Kitale, while his mother operates a small business at Moiben Trading Centre. Among his seven siblings are individuals engaged in farming, casual labor, and business, with one currently serving a jail term. The inmate's parents separated in 2009 due to domestic conflicts, after which he was primarily raised by his mother in Moiben. Interviews with family members reveal that they are currently unwilling to receive him back home. They expressed concern that his return may pose a risk to the safety of his mother, as they would be living under the same roof. Further inquiry with the victim, who is also the inmate's mother, revealed that she fears for her life, citing repeated threats made by her son. She indicated that, should he be released, she would be compelled to seek alternative accommodation for her own safety. This inquiry has therefore established that the inmate's current home environment is neither supportive nor conducive for his rehabilitation and reintegration into the community.

Personal History

The Inmate was born in 1997 in West Pokot County. He began his education at St. Macho Muslim Primary School before transferring to Meibeki Primary School, where he completed his primary education and sat for the KCPE in 2010, scoring 346 marks out of 500. He later attended St. Anthony Boys Secondary School in Moiben and obtained a mean grade of C plain in the 2014 KCSE. Although he claimed to have enrolled for a Diploma in Education at Moi University, this was refuted by his mother. He subsequently joined Alexandria College in Eldoret for a Diploma in Computer Science but dropped out in the first year, citing lack of school fees. In 2019, he enrolled at Moiben Technical and Vocational Training Centre for a course in Agricultural Engineering but again dropped out during the first semester, allegedly due to financial constraints. After leaving school, he briefly worked as a tout in Eldoret and later secured a casual job as a security guard at Unilever, which lasted only three months. Since then, he has engaged in casual labor. The offender is single, has no children, and prior his incarnation, he resides in a one-roomed semi-permanent structure within his mother's homestead.

Prison Assessment Rehabilitation And Re-intergration



During his incarceration, the offender has demonstrated commendable efforts toward rehabilitation. He has received counselling and training on the consequences of crime and has shown a strong willingness to reform. The offender expresses sincere remorse for his actions and affirms that he has undergone significant personal transformation. Prison authorities hold him in high regard and support his early release.

Offenders' Attitude Towards Non-custodial Sentence

The inmate has admitted to committing the offence and reports that his time in prison has been a turning point in his life. He describes himself as reformed and expresses a sincere desire to change for the better. He is appealing for a non-custodial sentence, citing his intention to reconcile with his mother.

Conclusion

Your Lordship, while the prison authorities commend the inmate for his discipline, cooperation and positive conduct during incarceration including his willingness to apply the skills acquired serious concerns persist regarding his reintegration. The complainant, who is also his mother, has expressed fear for her safety and that of her grandchildren, stating that the inmate poses a threat and that she would be forced to seek alternative shelter if he is released. Similarly, community members and local administrators from Moiben have echoed these concerns, emphasizing that his release at this time could endanger his mother's safety. The inmate is perceived as violent, and it is the collective view that the time he has served is not sufficient to support his full rehabilitation.

Recommendation

Considering the safety concerns raised by the inmate's mother who has explicitly stated that her life and that of her grandchildren would be at risk should he be released and the unsuitability of his current home environment for effective rehabilitation, I humbly submit that a non-custodial sentence would not be appropriate or tenable at this time.

4. The role of non-custodial sentence should underpin our penal system in which custodial sentence remains a recourse of last resort in punishing offenders. The sentence policy guidelines of the judiciary 2023 provides a framework in which Judicial discretion should be exercised to arrive at a fair and proportionate sentence on individualized circumstances. The objectives and principles of sentencing are well articulated and defined as follows:
 - a. Retribution: to punish the offender for his/her criminal conduct in a just manner.
 - b. Deterrence: to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
 - c. Rehabilitation: to enable the offender reform from his/her criminal disposition and become a law-abiding person.
 - d. Restorative justice: to address the needs arising from the criminal conduct such as loss and damages.
 - e. Community protection: to protect the community by incapacitating the offender.
 - f. Denunciation: to communicate the community's condemnation of the criminal conduct.
 - g. Reconciliation: To mend the relationship between the offender, the victim and the community.



- h. Reintegration: To facilitate the re-entry of the offender into the society.
4. In a documented research by Chrispinus Adenya Aben entitled Factors Influencing Success of Non-Custodial Sentence in Kenya: A Case of Kilifi District in Kilifi County 2011. He made the following observations: First and foremost prison population around the world is increasingly placing enormous financial burdens on governments. There is growing recognition that imprisonment does not achieve some of its most important stated objectives, as well as being harmful to offenders, families and in the long term to the community (UNODC, 2006).
 5. It came out clearly from his research; Supervision is an essential component of community based correction with the primary objective of enforcing compliance with the conditions of release to minimize risk to the public and to re-integrate the offender into the law abiding lifestyle. Lax supervision and failure to deal firmly with those who persistently violate the terms of release can bring an entire system into disrepute in criminal justice. (Killinger GG and Cromwell P.F, 1990). “The law is without doubt a remedy for great evils, yet it brings with it evils of its own”. (Subbrano V.C.G. 1993). There are three primary gateways in the criminal justice. The first is at the police at the initial stage of apprehension, the second is at the court after the determination of guilt and passing of a sentence and the third is the gateway to the community at the conclusion of the sentence (Johnson R, 2003).
 6. Rule 8.2 of the Tokyo rules on non-custodial affirm that courts or sentencing authorities may dispose off cases in any of the following ways-verbal sanctions, admonitions, reprimands and warning, conditional discharge, status penalty, economic sanctions and monetary restitution, restitution to the victim or compensation order, confiscation or expropriation, suspended or deferred sentence, probation and judicial supervision, community service order, house arrest and any other non-institutional treatment. Supervision is critical in realization of sentencing objectives. This is operationalized as poor and lax supervision leads to reconviction and abscondism. The quality and number of contacts between the offender are key in reforming, re-integrating the offender. The caseload per officer and the frequency of contacts between the officer and the probationer determines the level of intensity of supervision based on the risk category of the probationer. The community plays key role in having offenders change. Community attitude, home environment is deterministic of offender’s potential to change.
 7. Time has come to re-conceptualize the effectiveness of custodial sentencing to promote a clear, fair, uniform and consistent approach by all levels of courts. A theme of any review of sentence must not lose sight of the objectives and sentencing. Am of the consider view that an effective sentence must also serve to communicate to society that justice has been done and the wrong doer punished and denounced for his or her conduct. Generally speaking over time I have been involved in the practice of law as a trier of criminal cases they is no probative evidence that the harsher, punitive or severe the sentence does provide greater marginal deterrent effects.
 8. Sentencing is a discretionary process mainly exercised by trial courts who have the advantage to appreciate the circumstances of the offence and how it applies to the sentencing objectives and principles within the regulatory framework of our [sentencing policy guideline](#) 2023. This court is being asked to review the custodial sentence and have it substituted with non-custodial sentence. As I appreciate the record and the impugned decision on sentence I bear in mind that this is one area of law which involves the weighing of may complex factors, it will always be possible to point to some factors which should arguably have been taken into account or left out of account; even if they should have been, the court should not intervene unless it is convinced that this would have resulted in the decision going the other way.



9. There is a big outcry amongst our communities and society at large on the level of inconsistency, disparity, unfairness, and disproportionate verdicts on sentence being imposed by the trial courts and on even on appeal which do not reflect the sentencing objectives and principles in our policy document. As if that is not enough the letter and spirit of our sentencing scheme seems to depart from the legislatures intention and vision in the criminal administration of justice. Sentencing in Kenya ought to be fair and proportionate to the crime being prosecuted by the state as against the accused persons or defendant. These canons on fair and proportionate sentence requires that: All relevant factors of a case must be considered including the seriousness of the offence, the impact on the victim and others affected by the case, and the circumstances of the offender; Sentences should be no more severe than is necessary to achieve the appropriate purposes of sentencing in each case; Reasons for sentencing decisions must be stated as clearly and openly as circumstances permit; Sentencing decisions must be made lawfully and sentencers must have regard to any sentencing guidelines which are applicable; People should be treated equally, without discrimination; and Sentencing decisions should treat similar cases in a similar way, assisting consistency and predictability.
10. I have read the record and the probation officer report I concur with the findings made on inquiry that the applicant is not fit and eligible to be released from custody so as to serve non-custodial sentence as part of the rehabilitation program. The application for review is therefore dismissed under section 382 of the CPC. It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 24TH DAY OF JULY 2025

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R. NYAKUNDI

JUDGE

